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No. 463

In the Supreme Court of the United States

OCTOBER TERM, 1929

CHARLES JACKSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

No. 463

CHARLES JACKSON, PETITIONER

v.

UNITED STATES OF AMERICA

ERRATUM

At the bottom of page 8 of brief for United States in opposition is the following statement:

> The only two Circuit Courts of Appeals, therefore, that have passed upon the question have reached the same conclusion based upon the same reasons; * * *.

Since this brief has been printed it has come to our attention that this statement was not accurate. In *United States* v. *Woolen*, 25 F. (2d) 673, the Circuit Court of Appeals for the Sixth Circuit held that interest could be recovered on the accrued installments, compounded annually at the rate of five per cent per annum, and awarded interest on the judgment from its date to the date of its payment. This decision was based upon different reasoning from that advanced by the petitioner in the instant case, and we submit that it was based upon a clearly erroneous construction of the statute. The Government applied for a writ of certiorari, No. 290, October Term, 1928. It was granted by this Court

on October 15, 1928, 278 U. S. 589. Later a stipulation was entered into by counsel by the terms of which the respondent agreed to waive his claim for interest. Upon motion of the Solicitor General the judgments of the Circuit Court of Appeals for the Sixth Circuit and of the District Court were vacated and the cause was remanded to the District Court with instructions to enter judgment in favor of the respondent for the sum of $1,485.73 without interest or costs in accordance with the stipulation. 278 U. S. 665.

The statement on page 12 of our brief that the decision is not in conflict with any decision of other Circuit Court of Appeals is for the same reason incorrect.

The conflict is only in the result, and as we submit that the reasoning in the *Woolen case* is clearly erroneous, we still oppose the petition in the instant case.

Respectfully submitted.

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NOVEMBER, 1929.

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OPINIONS BELOW

The opinion of the District Court (R. 17) is reported in 24 F. (2d) 981. The opinion of the Circuit Court of Appeals (R. 39) is reported in 34 F. (2d) 241.

JURISDICTION

The judgment of the Circuit Court of Appeals for the Tenth Circuit was entered on August 2, 1929. (R. 44.) The petition for certiorari was filed October 26, 1929.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION INVOLVED

Whether interest can be awarded against the United States on unpaid installments of a war risk insurance policy from the date due to the date judgment is entered, and on the judgment from its entry until paid.

STATEMENT

This action was brought in the United States District Court for the District of Kansas to recover on a war risk life insurance policy on the ground of permanent and total disability. (R. 2.) The case was tried before the court on a written waiver of jury (R. 14), and resulted in a judgment in favor of the plaintiff (R. 28), awarding him accrued installments of $57.50 per month under the policy from October 30, 1918, to the date of the entry of the judgment, with 6 per cent simple interest on each unpaid installment and 6 per cent interest on the judgment from the date of its entry until paid (R. 29).

The Government took an appeal to the United States Circuit Court of Appeals for the Tenth Circuit from the ruling of the District Court on the allowance of interest (R. 16), but did not question the right of the plaintiff to recover on the policy. The Circuit Court of Appeals held that interest was not recoverable, and reversed the judgment of the District Court. (R. 41.)

ARGUMENT

I

THERE IS NO CONFLICT BETWEEN THE DECISION OF THE CIRCUIT COURT OF APPEALS AND THE DECISIONS OF THIS COURT, AND THE RULINGS OF THE CIRCUIT COURTS OF APPEALS ARE UNIFORM IN DENYING INTEREST

The decision of the Circuit Court of Appeals denying interest in this case is not in conflict with any decision of this Court, and the rulings of the Circuit Courts of Appeals are uniform in disallowing interest against the Government, in cases involving contracts of war risk life insurance.

The petitioner relies strongly, however, on the case of *Standard Oil Company* v. *United States*, 267 U. S. 76, in which case a libel was filed against the United States on policies of marine insurance issued by the Government on a steamship and her freight and advances against war risks pursuant to the Act of September 2, 1914, c. 293, par. 5, 38 Stat. 711, 712. In allowing interest against the Government in that case, it is stated (p. 79):

> When the United States went into the insurance business, issued policies in familiar form and provided that in case of disagreement it might be sued, it must be assumed to have accepted the ordinary incidents of suits in such business.

The Government entered the marine insurance field for profit, and the premium rates on marine

insurance policies were changed from time to time (as specifically allowed in Section 3 of the Act), to assure the Government of a profit. But the same reasoning is not applicable to war risk life insurance policies issued by the Government pursuant to the provisions of the War Risk Life Insurance Act of October 6, 1917, c. 105, 40 Stat. 398 and the distinction between the two kinds of insurance is clearly set forth by this Court in the case of *White* v. *United States,* 270 U. S. 175, which suit was brought on a contract of war risk life insurance, in which this Court ruled (p. 180):

> The certificate of insurance provided in terms that it should be "subject in all respects to the provisions of such Act [1917]" * * *. The insurance was a contract, to be sure, for which a premium was paid, but *it was not one entered into by the United States for gain.* All soldiers were given a right to it and the relation of the Government to them if not paternal was at least avuncular. It was a relation of benevolence established by the Government at considerable cost to itself for the soldier's good. (Italics ours.)

Following the principle enunciated by this Court in the *White case,* the courts have consistently held that war risk life insurance is a special statutory kind of insurance and that contracts issued by the Government therefor are not to be construed according to the principles of law applicable to policies of insurance issued by commercial companies.

Cassarello v. *United States* (C. C. A., 3d), 279 Fed. 396; *Birmingham* v. *United States* (C. C. C., 8th), 4 F. (2d) 508; *Richmond* v. *United States* (C. C. A., 5th), 6 F. (2d) 143; *Bean* v. *United States* (D. C. Kan.), 7 F. (2d) 393; *Tomlinson* v. *United States* (D. C. Mont.), 18 F. (2d) 795; *Helmholz* v. *Horst* (C. C. A., 6th), 294 Fed. 417.

In *United States* v. *Lyke*, 19 F. (2d) 876, the Circuit Court of Appeals for the Ninth Circuit said (p. 877):

> We are of the opinion that interest was not allowable. It is a settled rule that, in the absence of a stipulation to pay interest, or a statute allowing it, none can be recovered against the United States upon unpaid accounts or claims. *United States* v. *Rogers*, 255 U. S. 163, 169, 41 S. Ct. 281, 65 L. Ed. 566; *United States* v. *North American Transportation & Trading Co.*, 253 U. S. 330, 40 S. Ct. 518, 64 L. Ed. 935.
>
> The defendant in error cites *Standard Oil Co.* v. *United States*, 267 U. S. 76, 45 S. Ct. 211, 69 L. Ed. 519, as authorizing a judgment for interest. Interest was there allowed on a marine insurance policy, on the ground that the United States had gone into the insurance business and had accepted the ordinary incidents of suits in such cases. The reasoning on which that conclusion was reached does not apply to the present case. The war risk insurance contract for the soldier is not a business contract. It partakes of the nature of both insurance and pension. It is a "relation of benevolence, established

by the government at considerable cost to itself, for the soldier's good." *White* v. *United States,* 270 U. S. 175, 46 S. Ct. 274, 70 L. Ed. 530; *Bean* v. *United States* (D. C.) 7 F. (2d) 393, 396.

We find no ground for holding that it was the intention of Congress, in providing for such insurance, to abrogate the established rule against the allowance of interest on claims against the United States. (Italics ours.)

The above ruling of the Ninth Circuit correctly states the fundamental distinction between actions on marine insurance policies and those on war risk life insurance policies.

In full accord with such ruling, the Circuit Court of Appeals for the Tenth Circuit in the instant case said (R. 41):

Neither the statute nor the contract of war risk insurance makes express provision for the payment of interest. If the United States is liable for interest it must be because of an implied provision of the contract.

In the case of *Standard Oil Co. of N. J.* v. *United States,* 267 U. S. 76, which was an action upon a policy of marine insurance issued under the provisions of the Act of September 2, 1914, U. S. Comp. St. 1918, Sec. 514, the court held that when the United States went into the business of insurance, issued policies in familiar form and provided that in case of disagreement it might be sued, it must be assumed to have accepted the ordinary incidents of suits in such busi-

ness, including the payment of interest. This case was relied upon by the trial court as authority for awarding interest in the instant case.

It is true that Congress, by the same statute, created the bureau of war risk insurance and authorized the government to issue policies of marine insurance and policies of life and permanent disability insurance. However, the Acts of Congress disclose that the nature and purposes of the two classes of insurance differed in material particulars. Marine insurance was first authorized by the Act of September 2, 1914, 38 St. 711, Sec. 2 thereof reads as follows:

" That the said Bureau of War Risk Insurance, subject to the general direction of the Secretary of the Treasury, shall, as soon as practicable, make provisions for the insurance by the United States of American vessels, their freight and passage moneys, and cargoes shipped or to be shipped therein, against loss or damage by the risks of war, whenever it shall appear to the Secretary that American vessels, shippers, or importers in American vessels are unable in any trade to secure adequate war risk insurance on reasonable terms."

The provisions for *life* and disability insurance were provided by the amendment of October 6, 1917, 40 St. 409.

Sec. 400 of Art. IV, of the Act of October 6, 1917, reads as follows:

" That in order to give to every *commissioned officer and enlisted man* and to every

member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) *when employed in active service under the War Department or Navy Department* greater protection for themselves and their dependents than is provided in Article III, the United States, upon application to the bureau and without medical examination, shall grant insurance against the death or total permanent disability of any such person in any multiple of $500, and not less than $1,000 or more than $10,000, upon the payment of the premiums as hereinafter provided."

In the Standard Oil Case the Supreme Court held that the United States had gone into the business of marine insurance and issued marine insurance policies in the usual form of such policies. *On the contrary, in issuing life and disability insurance policies, under the provisions of the amendment of October 6, 1917, the United States did not go into the life insurance business and did not issue life insurance policies in the usual form.* Furthermore, under such policies the payments to be made in case of death or permanent disability were not indemnity in their entirety, but were partly in the nature of pension. (Italics ours.)

The only two Circuit Courts of Appeals, therefore, that have passed upon the question have reached the same conclusion based upon the same reasons; both decisions distinguish the decision of this Court in the *Standard Oil case* on the basis

of this Court's ruling in the *White case;* and both Circuit Courts of Appeals, in denying interest, rely on the well-settled rule consistently announced by this Court that interest is not allowable against the Government in the absence of statutory authority, or unless it is provided for by the terms of the contract, or must be paid as a part of just compensation.

In the case of *Gianakouras* v. *United States,* 33 F. (2d) 936, in which the District Court allowed interest, an appeal has been taken by the Government to the United States Circuit Court of Appeals for the Sixth Circuit.

II

THE WAR RISK INSURANCE LEGISLATION MAKES NO PROVISION FOR THE ALLOWANCE OF INTEREST, NOR DOES THE CONTRACT OF INSURANCE, AND IT IS NOT A PART OF JUST COMPENSATION

As stated by this Court in *Boston Sand and Gravel Company* v. *United States,* 278 U. S. 41, 47:

> We start with the rule that the United States is not liable to interest except where it assumes the liability by contract or by the express words of a statute, or must pay it as part of the just compensation required by the Constitution. *Seaboard Air Line Ry. Co.* v. *United States,* 261 U. S. 299, 304, 306.

The Acts of Congress on war risk insurance and the contract of insurance do not provide for any interest against the United States and, of course,

"just compensation" is not involved in this case. The case therefore falls squarely within the rule above announced by this Court.

The War Risk Insurance Act of October 6, 1917, in Section 400 (40 Stat. 409), provided for the issuance by the Government of policies of war risk life insurance, and in Section 405 of the Act (40 Stat. 410), as amended (U. S. C., Title 38, Sec. 445), made provision for suit against the Government in the event of disagreement as to a claim under a contract of insurance between the Bureau of War Risk Insurance (Veterans' Bureau) and any person claiming thereunder. The same provisions were carried into the World War Veterans Act of June 7, 1924, as Sections 300 and 19 respectively (c. 320, 43 Stat. 624, 613: U. S. C., Title 38, Secs. 511 and 445). In conferring jurisdiction on the District Courts to hear and determine such controversies no provision is made therein for the allowance of interest in any judgment which is entered against the United States, and nowhere in the war risk insurance legislation is any authority conferred for its allowance against the Government.

The Act of October 6, 1917, is the first authority given by Congress for granting war risk life insurance by the United States, and it provided for those in the *military* service. The Act of June 12, 1917, c. 26, 40 Stat. 102, amending and reenacting the Marine Insurance Act of September 2, 1914, provided in Sections 2, 3a and 3b that provision

should be made by the Secretary of the Treasury for insuring "the masters, officers, and crews" of American merchant vessels against loss of life or personal injury by the risks of war (Sec. 2), and that "the owner of every American merchant vessel engaged in such trade shall insure the master, officers, and crew of such vessel against loss of life or personal injury from war risks." (Sec. 3a.) If the owner fails to carry such insurance, the Secretary of the Treasury is authorized "to effect such insurance with the Bureau of War Risk Insurance at the *expense of the owner of such vessel,* and the latter shall be liable for such expense and, in addition, to a penalty of not exceeding $1,000." (Sec. 3b), (p. 104). (Italics ours.) As shown by the legislative history of the Act, the purpose of requiring the owners of vessels to carry that insurance, *at their expense,* was to encourage American shipping. (S. Rept. 33 and H. Rept. 62, Senate Reports, Vol. 1, House Reports, Vol. 1, 65th Cong., 1st Sess.) That insurance is at the expense of the vessel owner and is vastly different from the life insurance granted those in the military service at enormous expense to the Government. The two kinds of insurance are entirely distinct—one carried at the expense of a vessel owner, covering civilian employees to encourage American shipping, while the war risk life insurance granted under the Act of October 6, 1917, is at the expense of the Government and is granted only to those in the military service to provide "protection for themselves and their dependents." Sec. 400, supra, p. 8.

While the Act of October 6, 1917, providing for war risk life insurance, is stated to be an amendment to the Act of September 2, 1914, providing for marine insurance on vessels and cargo, the two Acts in reality are distinct, passed by Congress for different purposes and covering entirely different kinds of insurance, and governed by different principles, as will be seen by a comparison between the decisions of this Court in the *Standard Oil* and *White cases, supra.*

CONCLUSION

The decision of the Circuit Court of Appeals is not in conflict with any decision of this Court or of other Circuit Courts of Appeals. Neither the war risk insurance legislation nor the contract of insurance provides for interest against the United States and the ruling of the Circuit Court of Appeals is squarely within the general rule as to the allowance of such interest. The decision of the Circuit Court of Appeals is correct and the petition should be denied.

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NOVEMBER, 1929.

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